IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

POCONO INVITATIONAL SPORTS CAMP, INC., ET AL.	:	CIVIL ACTION
v.	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION	:	No. 00-5708

O R D E R a n d M E M O R A N D U M

Ludwig, J.

AND NOW, this 10th day of July, 2001, the motion of plaintiff Blue Star Productions, Inc., for a temporary (emergency) order directing the NCAA to certify its women's basketball tournament events in Terre Haute, Indiana on July 7-11, 2001 and in Las Vegas, Nevada on July 11-12, 2001 is denied.[1]

Plaintiff filed its motion yesterday, July 9, 2001, having first contacted this court on Friday afternoon, July 6, 2001, by telephone. At that time, the court held a telephone conference with counsel for the parties, and yesterday morning, defendant's counsel advised the court that it would not approve the events or compromise its position. Plaintiff's motion and the parties' briefs followed.

---

[1] Injunctive relief before a final adjudication is appropriate where "(1) the plaintiff is likely to succeed on the merits; (2) denial will result in irreparable harm to the plaintiff; (3) granting the injunction will not result in irreparable harm to the defendant; and (4) granting the injunction is in the public interest." NutraSweet Co. v. Vit-Mar Enterprises, Inc., 176 F.3d 151, 153 (3d Cir. 1999) (citation omitted). A "plaintiff's failure to establish any element in its favor renders a preliminary injunction inappropriate." Id.

A hearing is not required if "based on affidavits and other documentary evidence . . . the facts are undisputed and the relevant factual issues are resolved." Bradley v. Pittsburgh Bd. of Ed., 910 F.2d 1172, 1176 (3d Cir. 1990).

Factual Background

1. On November 9, 2000, plaintiffs Pocono Invitational Sports Camp, Inc., Eastern Invitational Basketball Clinic, Inc., Future Stars Basketball, LLC., Five-Star Basketball Camp, Inc., and Blue Star Productions, Inc. filed this putative class action on behalf of all entities that have conducted private camps for high-school basketball players since the summer of 1996.[2] That litigation is pending. Defendant National Collegiate Athletic Association, a voluntary unincorporated association of colleges, permits Division-I (larger colleges) coaches to attend these camps contingent upon the camp's timely application and the NCAA's issuance of a certification of the event.

2. On June 15, 2001, the NCAA rejected the requests of plaintiff Blue Star Productions, Inc. for the certification of certain tournaments on the ground that the applications were belated under NCAA rules and practice. In December, 2000, the NCAA had distributed to camp operators a memorandum that stated it would not consider applications received less than "30 days" (boldface) before the date of the event. Blue Star's applications were mailed on June 7, 2001. On June 12, 2001, a representative of Blue Star checked with an NCAA

[2] The complaint alleges, *inter alia*, that the NCAA and its member institutions conspired to give their own institutional camps an unfair competitive advantage over plaintiffs by adopting legislation and regulations that (1) prohibit Division-I college basketball coaches from coaching, speaking, or teaching at private basketball camps; and (2) reduce for the summer of 2001, and thereafter eliminate, the time during which Division-I college basketball coaches may attend private camps to observe and evaluate high school players. The action is filed under the Clayton and Sherman Acts and includes tortious interference with actual and prospective contractual relations.

administrator and was informed that the applications had not been received. On the following day, June 13, Michael Flynn, Blue Star's principal, telephoned the NCAA and was advised to fax copies of the applications, which he did.[3] The NCAA did not approve the tournaments in Terre-Haute because the application receipt date, June 13, was less than thirty days from the dates of the camp. The first two days of tournaments in Las Vegas were not approved for the same reason. On June 15, the NCAA certified the last two days of the Las Vegas events, which were scheduled thirty days or more after receipt of the fax.

3. Michael Flynn is an experienced operator of basketball camps. In the past, the NCAA has refused to certify some of his applications, as well as the applications of other operators, because they were received less than thirty days in advance of the event. Until now, Mr. Flynn has not contested those rejections.

Mr. Flynn has not proffered an explanation for mailing the applications so close to NCAA's thirty-day receipt deadline or for belatedly following up or for not taking legal action until the proverbial last minute. Blue Star now challenges the NCAA's rejection of its present applications as arbitrary and capricious.[4]

---

[3] The NCAA memorandum stated that applications could be faxed. The mailed applications, according to the NCAA, were received on June 14, 2001.

[4] One argument made by Blue Star is that the NCAA's published regulation requires the applications to be submitted three months before the camp date – but the operators can hardly gripe about the thirty-day modification of the regulation.

Discussion

The harm of which Blue Star now complains is, as the NCAA vigorously points out, of its own making. On the other hand, Blue Star stresses that the real losers here are the student athletes and their families who had planned and made arrangements to participate in and attend its tournaments. The loss of exposure of these young athletes to college coaches would appear to be a very unfortunate consequence of the NCAA's rigid insistence on its thirty-day-from-receipt rule. However, no aspiring basketball player or member of her family, or basketball coach, is a party plaintiff, or has joined in Blue Star's motion.[5]

Moreover, under the law that governs the granting of extraordinary relief of the type requested, it is necessary for plaintiff to show that it is likely to prevail in the ultimate determination of the case. Plaintiff has not demonstrated that the NCAA has not acted in accordance with its rules or that its rules are likely to be set aside in this proceeding. See, e.g., Sheldon v. NCAA, 539 F.2d 1197, 1198 (9th Cir. 1976) ("it is not judicial business to tell a voluntary athletic association how best to formulate or enforce its rules"). When the entirety of the record is before the court, a different conclusion may of course be reached.

In the event of an appeal, a more comprehensive decision will be filed.

_____

Edmund V. Ludwig, J.

[5] Blue Star submitted two basketball coaches' declarations that support the claim that the players and their families, as well as the coaches, are the victims of the non-certifications. But there appears to be no basis in the law on which their harm can be regarded as an element of Blue Star's injury. See American Dairy Queen Corp. v. Brown-Port Co., 621 F.2d 255, 259 n.4 (7th Cir. 1980) (the irreparable injury prerequisite "is not satisfied by the harm that may befall a nonparty").